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Return or restitution of cultural property to the countries of origin

Note by the Secretary-General

The Secretary-General hereby transmits the report of the Director-General of the United Nations Educational, Scientific and Cultural Organization on the return or restitution of cultural property to the countries of origin in accordance with General Assembly resolution 61/52.[1]

* A/64/150.

[1] In paragraph 4 (d) of the annex to its resolution 58/316, the General Assembly decided that the item entitled "Return or restitution of cultural property to the countries of origin" would be considered every three years.

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Report of the Director-General of the United Nations Educational, Scientific and Cultural Organization on the action taken by the organization on the return and restitution of cultural property to its countries of origin

Summary

The present report, which covers a three-year period, describes the activities undertaken by the United Nations Educational, Scientific and Cultural Organization (UNESCO) to combat illicit trafficking in cultural property and facilitate its return and restitution to its country of origin in the case of illicit export or theft. In addition to action to promote and to assist Member States in the national implementation of the relevant international standard-setting instruments, UNESCO has taken steps to fulfil the recommendations adopted by the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation at its fourteenth and fifteenth sessions (held in 2007 and 2009, respectively).

Conclusions and recommendations are contained in paragraph 13 and in annexes II and III of this report. They were adopted by the member States and experts who met in Athens and in Seoul in March and November 2008, respectively, and at UNESCO headquarters in June 2009.

I. Introduction

1. Since the submission of the previous report by the Director-General (A/61/176), the United Nations Educational, Scientific and Cultural Organization (UNESCO) has continued its work towards the return and restitution of illicitly removed cultural property to its countries of origin. In addressing this issue, UNESCO has promoted the relevant international standard-setting instruments, worked directly with its member States as well as partner governmental and non-governmental organizations and taken steps to raise public awareness of relevant restitution and illicit trafficking issues. In particular, efforts have been made to fulfil the recommendations adopted by the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation at its fourteenth and fifteenth sessions (held in 2007 and 2009, respectively). The recommendations adopted by the Committee at the fifteenth session, in 2009 are annexed to this report.

II. Fifteenth session of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation

2. At the fifteenth session of the Committee, held in Paris from 11 to 13 May 2009, 21 of the 22 States members of the Committee[2] were represented. Forty States members of UNESCO that are not members of the Committee were also inscribed as observers, as were two permanent observer missions, four intergovernmental organizations, one non-governmental organization, 15 experts and three media representatives.[3]

3. The secretariat reported[4] to the Committee at its fifteenth session on developments since the Committee's previous session, including progress on the implementation of recommendations made at the fourteenth session, on promotion of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and the 1995 International Institute for the Unification of Private Law (UNIDROIT) Convention on Stolen or Illegally Exported Cultural Objects and on activities carried out by UNESCO and its partners, including the International Council of Museums (ICOM), the International Criminal Police Organization (INTERPOL), the World Customs Organization (WCO), the Italian Carabinieri and the Central Office for the Fight against Traffic in Cultural Goods (OCBC) to combat illicit trafficking in cultural property more effectively. The report also covers the following items: promotion of bilateral relations between the countries involved in requests for restitution of cultural property that are currently pending before the Committee; development of the UNESCO cultural heritage laws database; the Athens International Conference on the Return of Cultural Property to its Country of Origin (17-18 March 2008),[5] the report

[2] A list of States members of the Committee is included in annex I to this report.

[3] See the list of participants at: http://unesdoc.unesco.org/images/0018/001825/182547M.pdf.

[4] Report available at: http://unesdoc.unesco.org/images/0018/001822/182210F.pdf.

[5] See: http://portal.unesco.org/culture/fr/ev.php-URL_ID=36430&URL_DO=DO_TOPIC&URL_SECTION=201.html.

of the extraordinary session of the Committee held in Seoul (25-28 November 2008);[6] the outcome of the meeting on the preparation of a draft declaration of principles relating to cultural objects displaced in connection with the Second World War (17-18 March 2009); the Committee's Fund; relations with the United Nations Economic and Social Council and the United Nations Office on Drugs and Crime (UNODC); Security Council resolution 1483 (2003), adopted on 22 May 2003, on Iraq and the protection of its cultural property; and, lastly, the status of ratification of the 1970 UNESCO Convention and the 1995 UNIDROIT Convention.

A. Consideration of cases pending before the Committee

4. At its fifteenth session, the Committee considered the three pending cases of restitution: the request by Greece for the restitution of the Parthenon marbles by the British Museum (United Kingdom), the request by Turkey for the return of the Boğazköy sphinx from Germany and the request by the United Republic of Tanzania submitted to the Barbier-Mueller Museum in Geneva through the intermediary of the Swiss Confederation for the restitution of a Makondé mask.

5. Regarding the first case and pursuant to recommendation No. 1 adopted by the Committee at its fourteenth and fifteenth sessions, the Director-General encouraged the holding of meetings between Greece and the United Kingdom on the subject of the Parthenon Marbles and once again offered the assistance of UNESCO. Contacts are being maintained between professionals in the two countries concerned and the secretariat has provided support for several meetings between representatives of those countries since 2007, including on 23 April 2009 in London. A meeting also took place on 12 May 2009 during the fifteenth session of the Committee. The British Museum has suggested offering certain panels on loan but makes that offer conditional on official recognition by Greece of the British Museum's ownership of the marbles. The Greek authorities have reiterated their wish to see the sculptures returned to Athens. Greece has also acknowledged fruitful cooperation with the United Kingdom on cultural matters and expressed the wish that it would work as a catalyst for finding a satisfactory solution. Greece and the United Kingdom jointly presented to the Committee a draft recommendation that the Committee adopted (see annex III, recommendation No. 1).

6. In accordance with recommendation No. 2 adopted at the fourteenth and fifteenth sessions of the Committee, the Director-General invited Germany and Turkey to continue their dialogue "with a view to bringing this issue to a mutually acceptable solution" for both parties and to hold "comprehensive bilateral negotiations" in order to find a mutually acceptable solution. It has also offered the Secretariat's assistance for that purpose. Turkey and Germany jointly presented to the Committee a draft recommendation that the Committee adopted (see annex III, recommendation No. 2).

7. Recommendation No. 3 of the fourteenth and fifteenth sessions relates to the Makondé mask. In close cooperation with UNESCO, discussions have begun to be held between the United Republic of Tanzania and the Swiss authorities, which are in regular contact with the owner of the museum holding the mask. Switzerland is playing an important facilitating role in the negotiations and the United Republic of

[6] See annex II.

Tanzania has given assurances concerning protection of the Makonde mask once it has been returned (see annex III, recommendation No. 3).

III. UNESCO database of national cultural heritage laws

8. At its twelfth session, the Committee invited the Director-General, UNESCO member States and observer States to contribute to the development of the UNESCO database of national cultural heritage laws, which is a reference tool and compendium of good practice. This database was officially launched in 2005 at the Committee's thirteenth session, thanks to financing from the United States. In 2008 and 2009, the United States renewed its support for the database development project by providing funds in trust. These resources serve to finance the implementation of a plan of action for the technical upgrading and promotion of the database (simplification of online procedures for adding files, introduction of ISO codes making it easier to identify countries for cross-searching between different databases and addition of a geographical map).

9. In the light of the ongoing digitization of earlier texts and current laws, the index of all legislation available at UNESCO has been duly modified and updated. To date, almost 2,200 laws from about 170 States members are accessible on the website http://www.unesco.org/culture/natlaws.

10. UNESCO member States are still strongly encouraged to submit their national cultural heritage legislation to the Secretariat, together with any relevant updated information (official contacts, relevant services, websites, and so on) for inclusion in the database. They are asked to provide officially to UNESCO information in electronic format (diskette, CD-ROM or electronic mail), together with an official written authorization from the competent national authority allowing UNESCO to reproduce the legislation and export/import certificates on its website and to insert a link between the UNESCO database of national cultural heritage laws website and the official national site, unless it is expressly specified that such a link is prohibited or not desired.

IV. Athens International Conference on the return of cultural property (17-18 March 2008)

11. At its thirteenth session, the members of the Intergovernmental Committee invited the Director-General to examine the possibility of financing an international conference of experts and actors in the field of the return and restitution of cultural property to analyse the legal and moral grounds associated with this issue, identify appropriate reinforcement of the existing legal and practical tools for and growing trends in this field, and propose future action thereon. On the initiative of Greece, during the Committee's fourteenth session, there was a unanimous recommendation that the Director-General of UNESCO organize that meeting in Athens, in cooperation with and with financial support from the Hellenic Republic, for the benefit of lawyers, museum professionals and experts in the field of the return of cultural property. This Conference was held on 17 and 18 March at the new

Acropolis Museum and formed part of a series of meetings[7] organized by UNESCO and its member States as forums for reflection and exchanges on the issue of the return of cultural property and providing a clearer picture of the challenges involved. This Conference also offered an opportunity for thinking about ways of enhancing the action of the Committee.

12. The Athens Conference convened a large number of governmental and non-governmental experts and a panel of high-level professionals who had been involved in discussions leading to the return and restitution of cultural property. The first day was devoted to particular cases of returned property presented by persons who had been involved (for example the return of the Axum Obelisk from Italy to Ethiopia; repatriation of ancestral remains from the United Kingdom to Australia, and so on). On the second day, discussions took place in four thematic workshops linked to the debate on returns (ethical and legal aspects; mediation and cultural diplomacy; museums, sites and cultural context; international cooperation and research). The conference proceedings have been published in English and French in a double issue of the UNESCO review *Museum International*, which was presented to UNESCO member States in May 2009.

13. At the conclusion of the Conference, the experts adopted a number of conclusions which included a call for UNESCO to continue to organize international conferences in order to intensify the study of the issue of the return of cultural property to its country of origin in order to produce viable and realistic solutions. They recognized that it was the original context that gave certain categories of cultural property their authenticity and unique value and that return and restitution operations could be a powerful vehicle for cooperation and economic promotion. The participants also recalled that the return of cultural objects was directly linked to the rights of humanity (preservation of cultural identity and preservation of world heritage) and, in that context, it was essential to sensitize the public about that issue and especially the younger generation. Lastly, the experts called for a strengthening of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation, particularly in its role of mediation and research into alternative means of dispute resolution.

V. Extraordinary session of the Intergovernmental Committee

14. For the first time in its history, and in order to celebrate its 30 years of existence, the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation held an extraordinary session. This exceptional meeting was held in Seoul from 25 to 28 November 2008 at the invitation of the Government of the Republic of Korea and pursuant to recommendation No. 6, adopted at the Committee's fourteenth session, in which States were invited to consider the elaboration of a future strategy for its work and to bring proposals and ideas for new approaches to the issue of the return and restitution of cultural property and of international cooperation in that domain. It also provided an opportunity to continue the discussions initiated at UNESCO on the subject of improving the operation of the Committee and its

[7] "Memory and Universality: New Challenges Facing Museums", debate organized by UNESCO in February 2007.

mandate, particularly during the debate on "Memory and Universality: New Challenges for Museums" (5 February 2007) and, above all, the Athens International Conference on 17 and 18 March 2008 on the return of cultural property to its countries of origin.

15. On 26 November, the first day of the extraordinary session, a public meeting of non-governmental experts was held under the auspices of the Republic of Korea. The invited experts engaged in a discussion of the Committee's past and future. The experts also showed interest in the study of symbolic cases of restitution in the world, whether or not carried out under UNESCO auspices, and in the question of return and restitution from an Asian perspective. The Korean authorities will be issuing a specific publication devoted to the proceedings of this non-governmental expert meeting.[8] The extraordinary session itself was held during the next two days, 27 and 28 November 2008. It offered an opportunity to take stock of the Committee's action over 30 years from the point of view of UNESCO and of several independent experts, discuss ways of strengthening its action and present the activities carried out by UNESCO partners (INTERPOL, the Italian Carabinieri force and ICOM). Generally speaking, all participants reaffirmed the importance of the Committee as a platform for States to exchange experience in fighting trafficking. The State representatives and experts, meeting together, called for the intergovernmental body to play an increasingly international role, having regard to growing world interest in issues relating to trafficking and to the return and restitution of cultural property. With that in view, during discussions on the recommendations of the extraordinary session, the members of the Committee debated at length the proposal that the ordinary sessions of the Committee be held yearly (instead of once every two years, as has been the case since its establishment), drawing on extrabudgetary financing as UNESCO's regular budget does not for the time being allow such frequent meetings.

16. Among other highlights of the discussions, the members of the Committee examined the question of updating and promoting the 1999 UNESCO Code of Ethics for Dealers in Cultural Property and the standard form for requests for return or restitution and its possible simplification, as well as various ways of more effectively informing and raising the awareness of States, actors in the art market and the public at large concerning the scourge of trafficking in cultural property. The experts also raised the possibility of a model law for the protection of cultural property or benchmarks in regard to State ownership of such property being drafted by the Committee. The debate on alternative modes of non-judicial settlement of cultural property disputes was also given attention by the participants, who considered that it would be for the Committee to take up that key issue in the future. As to the debate on the international community's growing interest in matters of cultural heritage protection, return and restitution, it highlighted the need to study in greater depth the major international legal and ethical principles underpinning the protection of cultural property. Lastly, in regard to the development of mediation and conciliation functions within the Committee, the experts considered that the adoption of the related draft rules of procedure would be an excellent means of strengthening the intergovernmental body and that the survey conducted by the Secretariat to collect States' comments on the draft would be very useful in that respect.

[8] The conclusions of this meeting of experts are contained in annex II to this report.

VI. Draft rules of procedure on mediation and conciliation

17. The General Conference of UNESCO, at its thirty-third session, adopted 33 C/Resolution 44, which added mediation and conciliation to the mandate of the Committee. Draft rules of procedure drawn up by the Secretariat on the basis of recommendation No. 3, adopted by the Intergovernmental Committee at its thirteenth session, were submitted to the Committee at its fourteenth session. Two rules out of eleven were considered and amended. An amended version of the draft rules had been circulated previously, at the fifteenth session, to the members of the Committee and to all the other States and observers for comment. A summary of the comments and amendments received and a consolidated draft of the rules were subsequently prepared by the Secretariat. The consolidated draft was again transmitted to the members of the Committee and to other States and observers for consideration. A long debate on the first four draft rules ensued and it was decided to establish a working group to prepare a proposal reflecting the different views. The working group proposed amendments in plenary session and the first three draft rules were adopted. However, the Committee was unable to reach consensus on draft rule 4 on eligibility criteria for the parties. It was therefore decided to constitute a subcommittee to consider the draft rules and to report to the Intergovernmental Committee at a later date.[9]

VII. Declaration of principles concerning cultural objects displaced in connection with the Second World War

18. Three sessions of the intergovernmental meeting of experts on the draft declaration of principles have been held so far (July 2006, March 2007 and March 2009). The preparation of the draft declaration was launched following the adoption by the General Conference of UNESCO of 33 C/Resolution 45, which stipulated, in particular:

- That the subject of cultural objects displaced in connection with the Second World War should be the subject of a standard-setting instrument; and
- That the form of this instrument should be a non-binding "declaration of principles".

19. The main results of the July 2006 session consisted essentially in the disappearance, where appropriate, of prescriptive formulations ("shall" in English; "eternal" present tense in French) and the suppression of the principle of compensation for war damage. Owing to the lack of time, the preamble was not studied and two draft principles were left in square brackets. The March 2007 session, at which the final draft of the draft principles was prepared, focused on the preamble and the two draft principles left in square brackets. On that occasion, the experts decided not to retain principle XII concerning lost or destroyed cultural property. The draft declaration was adopted by a vote of 28 member States in favour and 3 against, with 2 abstentions. Lastly, at the third session, in March 2009, some amendments were adopted by consensus. However, no consensus was achieved among all the participants on the entire text, in particular on principle XI on the exclusion of war damage. The draft declaration resulting from the work of that

[9] See annex III, recommendation No. 4.

meeting, which was submitted to the Executive Board at its 181st session, requested the Director-General of UNESCO to submit the draft to the General Conference at its 35th session, in October 2009, for its decision.

VIII. The Fund of the Intergovernmental Committee

20. The Fund of the Committee was established in November 1999 by resolution 30 C/27 of the General Conference of UNESCO, pursuant to recommendation No. 6, which was adopted the same year by the Committee at its tenth session. The purpose of the Fund is to support member States' efforts to combat effectively trafficking in their cultural property, particularly with regard to the verification of cultural objects by experts, their transport, insurance costs, establishment of facilities for displaying them in good conditions and the training of museum professionals in the countries of origin of cultural property. To date, thanks to donations from Greece, the amount available in the Fund stands at some €60,000.

IX. Strategy proposals for the future work of the Intergovernmental Committee

21. In pursuit of the discussions held in Athens in March 2008 and in Seoul in November 2008, and continuing the Committee's reflections on its raison d'être and its future work, the Secretariat of UNESCO invited various experts to participate in the work of the fifteenth session of the Committee and to address its member States.

A. Ethical principles and legal rules applicable to the return of cultural properties

22. Professor Tullio Scovazzi of the University of Milan presented to the members of the Committee and other observers his views, expressed on behalf of UNESCO, on the topic of ethical principles and legal rules and their impact on the return of cultural property. These principles, as they apply to the protection of cultural heritage and the return and restitution of cultural property, were reviewed and assessed in order to determine the extent to which they could facilitate the Committee's work in promoting the return of cultural property to its countries of origin or its restitution in case of illicit appropriation.[10]

B. Alternative methods of non-judicial conflict resolution

23. Aside from bilateral methods of conflict resolution (restitution pure and simple, for example), States also rely on organizations like UNESCO to facilitate, through diplomacy and intergovernmental dialogue, the settlement of conflicts involving cultural property. The Committee could thus compile an inventory of all of the alternative methods of resolving such conflicts, building on the work done by research bodies and centres, such as the International Centre for the Study of the

[10] This study is available on the UNESCO website: http://portal.unesco.org/culture/en/files/39157/12433501641Scovazzi_E.pdf/Scovazzi_E.pdf.

Preservation and Restoration of Cultural Property (ICCROM) and ICOM, the Permanent Court of Arbitration, the Committee on Cultural Heritage Law of the International Law Association, the Art Law Centre of the University of Geneva, and the Centre for Studies on International Legal Cooperation (CECOJI)-University of Paris-South XI National Centre for Scientific Research (CNRS) Research Centre for Cultural Heritage Law, which could cooperate with UNESCO or are already doing so. These alternative methods would then be made available to States, together with model agreements, directly on the UNESCO website.

24. To this end, the Secretariat has asked two academics — Marie Cornu, Research Director at the CNRS, and Marc-André Renold, Professor at the Law Faculty of the University of Geneva — to present to the members of the Committee and to observers the outcome of the research which they are currently undertaking on alternative methods for the settlement of disputes and the restitution of cultural property. Both have already given several lectures on this topic and are co-authors of an article which will be appearing on this subject in the second quarter of 2009 in the *Journal du droit international* (Clunet).[11] The States members of UNESCO welcomed these reflections and analyses and specifically requested the Director-General to continue, with the experts' help, to pursue the study of this matter.

X. Draft model legal provisions guaranteeing State ownership

25. On the occasion of the thirtieth anniversary of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation (Seoul, November 2008), the issue of preparing model legal provisions for the protection of cultural property against trafficking was extensively discussed. These model legal provisions would be offered to States as an example for their own legislation and adapted by them in accordance with their legal tradition. They should clearly lay down the principle of State ownership of cultural property, particularly archaeological property. The aim is to ensure that all States are "equipped" with sufficiently explicit legal principles that guarantee such ownership and may be invoked during legal proceedings between two States or between a State and a foreign private entity concerning claims to cultural property. The incorporation of such principles into national legislation goes hand in hand with ratification of the 1970 UNESCO Convention and the 1995 UNIDROIT Convention,[12] essential legal steps that must be taken by States wishing to combat trafficking in cultural property effectively. In this context, appropriate legislation would enable the international instruments to be applied more effectively.

26. The States members of UNESCO have welcomed the idea of drafting model legal provisions and have recommended that a committee of independent experts from the UNESCO and UNIDROIT secretariats should continue to consider the issue. The Committee will be responsible for preparing model legislative provisions defining State ownership, particularly of archaeological heritage, which could provide a basis for national laws and foster the standardization of terminology

[11] See *Journal du droit international* (Clunet), vol. 136, No. 2, April-May-June 2009.

[12] To this effect, the participants in the extraordinary session at Seoul pressed for fresh impetus to be given to the promotion of the UNIDROIT Convention, with a view to securing wider ratification.

among them, taking into account not only legal issues but also ethical, philosophical and historical issues.

XI. International cooperation

A. New States parties to the 1970 UNESCO Convention and the 1995 UNIDROIT Convention

27. Since 2007, eight States have become parties to the 1970 UNESCO Convention (New Zealand, Norway, Montenegro, the Republic of Moldova, Germany, Chad, Belgium and the Netherlands), bringing the total number of States parties to 119. The 1995 UNIDROIT Convention now has 29 States parties, following ratification by New Zealand and Greece in 2007 and 2008.

B. Cooperation with INTERPOL, UNIDROIT and ICOM

28. UNESCO continues to maintain fruitful cooperation with INTERPOL, UNIDROIT, WCO and ICOM in combating trafficking and in developing and implementing tools that facilitate the return and restitution of cultural property. Each of these organizations regularly invites experts and representatives of the other organizations to participate in its meetings, thus contributing to the consolidation of common ground and to information exchange on trafficking and restitution.

29. UNESCO participated in the fifth and sixth meetings of the INTERPOL Expert Group on Stolen Cultural Property in Lyons (2008) and at UNESCO Headquarters (2009). Among the recommendations adopted, the experts encouraged the use of tools such as the UNESCO-WCO Model Export Certificate for Cultural Objects and the database of laws and supported UNESCO initiatives to raise public awareness of the protection of this heritage and to assist its member States in introducing similar initiatives at the national level, in particular for children (see below, "Training workshops and awareness-raising campaign"). The experts also wished to recommend that national authorities continue their action against trafficking in cultural property through the Internet[13] and conclude special cooperation agreements with the main virtual auction sites. Lastly, emphasizing the crucial role of art market professionals in combating trafficking in cultural property, UNESCO and ICOM were encouraged to strengthen links with the main actors in the art trade.

C. Relations with the art market and codes of ethics

30. In response to the recommendations of its member States and the international organizations with which it works, UNESCO has established professional contacts with the auction houses Christie's and Sotheby's and with the Syndicat national des antiquaires (France). In addition, it is clear that the International Code of Ethics for Dealers in Cultural Property, developed by UNESCO in 1999 on the basis of the code of the International Confederation of Art Dealers (CINOA), is not sufficiently well known or respected by art dealers and the art market, as the confederations of

[13] http://portal.unesco.org/culture/fr/files/21559/11836449659MesuresTraficIllicite.pdf/MesuresTraficIllicite.pdf.

antique dealers and auction houses have also acquired their own code of professional ethics. Through the Committee and States, and taking account of the recommendation to depart from the wholly intergovernmental framework and work more with the art market, museums, private experts and civil society, UNESCO is engaging in a further campaign of promotion and is compiling a worldwide register of dealers in cultural property who make effective use of the Code, with a view to noting their critical remarks in this respect and updating the Code if need be.

31. It has been noted that, in general, museums are increasingly scrupulous in observing codes of ethics, particularly the ICOM code, and are more and more attentive to the principles and problems involved in the acquisition of works of unknown provenance. Experts who met at UNESCO have proposed that a code of ethics for collectors could also be drawn up in the same way, complementing the ICOM code. Such a specific code could be based in part on the 1995 UNIDROIT Convention, for example.

D. Training workshops and awareness-raising campaign

32. An information and training workshop on action to combat trafficking in cultural property in the Andean countries was held in Quito, from 17 to 20 September 2008. Moreover, the UNESCO Office in Baghdad and the Museums and Cultural Objects Section jointly organized, in June 2007 and November 2008, two training seminars on combating trafficking in cultural property for Iraq and its neighbours (Palestine, Jordan, Lebanon and the Syrian Arab Republic). The second part of this training course was designed more specifically for Iraqi lawyers, museum specialists, civil servants and police officers. A training activity was also organized in Vicenza, Italy, in partnership with the Italian Carabinieri and with the support of the Italian cooperation agency, for the countries of Africa in June 2009. The next training activity, which will take place in the second half of 2009, will focus on the States of Central America and the Caribbean and will be concerned more particularly with combating and preventing thefts of cultural objects of religious origin. Furthermore, a biennial training project on combating trafficking in cultural property in Mongolia has now been set up in cooperation with Monaco. Lastly, workshops and materials for promoting Iraqi heritage among children will be developed in 2009-2010 in conjunction with the UNESCO Office in Baghdad.

33. In May 2008, the Director-General of UNESCO sent a letter to States members of the Organization, observers, associate members, intergovernmental organizations, non-governmental organizations and major actors in the art market alerting them to the severity of the problem of trafficking in cultural property worldwide, particularly from the Mesopotamian region. In this connection, UNESCO is developing an audio-visual awareness-raising campaign in the form of a 20-minute film and a series of two-to-three-minute video clips. With this in view, UNESCO is seeking technical and financial support from partners such as airline companies, tour operators, international airports and others, so as to disseminate the awareness-raising campaign as widely as possible.

34. On the occasion of the Committee's thirtieth anniversary, UNESCO published, under the supervision of Professor L. V. Prott, the compendium *Witnesses to History — Documents and writings on the return of cultural objects*, which presents, in a volume of some 450 pages, articles written by some of the world's

leading experts on the return and restitution of cultural property, which go beyond the purely legal dimension. The compendium offers an overview of the historical, philosophical and ethical aspects of the return of cultural objects, cites examples of past and current cases and analyses a number of legal questions. It is a work suitable for students and the general public as well as a reference book for specialists, researchers and decision makers. It also illustrates how certain peoples have lost their entire cultural heritage and analyses the issue of return and restitution of that heritage by presenting a broad range of perspectives on the subject.

E. United Nations

35. The Director-General of UNESCO, in his letter of May 2008, again drew the international community's attention to resolution 1483 (2003) adopted by the United Nations Security Council on 22 May 2003. The resolution requests States Members of the United Nations to "take appropriate steps to facilitate the safe return to Iraqi institutions of Iraqi cultural property and other items of archaeological, historical, cultural, rare scientific, and religious importance illegally removed from the Iraq National Museum, the National Library, and other locations in Iraq since the adoption of resolution 661 (1990) of 6 August 1990, including by establishing a prohibition on trade in or transfer of such items and items with respect to which reasonable suspicion exists that they have been illegally removed". The resolution also calls upon UNESCO, INTERPOL and other international organizations, as appropriate, to assist in the implementation of this obligation.

36. Following the adoption by the Economic and Social Council of resolution 2008/23 of 24 July 2008, UNESCO responded favourably to the Council's request that the United Nations Office on Drugs and Crime convene, in close cooperation with UNESCO, an intergovernmental expert group meeting, with a view to preparing recommendations on protection against trafficking in cultural property for submission to the Commission on Crime Prevention and Criminal Justice at its eighteenth session. UNESCO is ready to continue working on the topic of organized crime with reference to trafficking but suggests that representatives of the United Nations Office on Drugs and Crime also be involved in the work conducted by UNESCO with its partners and through the Committee.

37. At the fifteenth session of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation and during the discussions on the draft rules of procedure on mediation and conciliation, a representative of the World Intellectual Property Organization (WIPO) presented her organization's work, particularly in the area of mediation and conciliation, and offered her organization's assistance in the work of UNESCO.

XII. Conclusion

38. Given the renewed interest of the international community in general, and the member States of UNESCO in particular, in the issue of combating trafficking in cultural property and arrangements for its return and restitution, the members of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation expressed

support for the idea of holding annual meetings of the Committee, provided that extrabudgetary funds could be mobilized for that purpose. They also decided to intensify the current debate and continue discussions on those topics by holding the sixteenth ordinary session of the Committee at UNESCO headquarters in the first half of 2010 (recommendation No. 5 of the Committee at its fifteenth session). The session will coincide with the fortieth anniversary of the 1970 UNESCO Convention and the fifteenth anniversary of the adoption of the 1995 UNIDROIT Convention.

39. Member States are invited to refer in particular to the recommendations in annex II to this report. They were adopted by the members of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation on the occasion of its thirtieth anniversary in Seoul in November 2008. Readers of this report are referred to the conclusions of the Athens International Conference on the Return of Cultural Property to its Country of Origin of March 2008, which are given in paragraph 13 of this report.

Annex I

Members of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation

According to the elections held during the 34th session of the General Conference of UNESCO (16 October-4 November 2007)

The 22 members of the Committee are elected from the UNESCO member States and renewed by half at elections that take place every two years during the General Conference.

*Angola	*India
–Belarus	–Italy
*Bolivia	–Japan
–Burkina Faso	–Libyan Arab Jamahiriya
*China	–Mongolia
*Columbia	–Niger
–Czech Republic	–Peru
*Egypt	*Republic of Korea
–Greece	*United Republic of Tanzania
*Guatemala	–United States of America
*Hungary	–Zimbabwe

* The General Conference of UNESCO elected, in its 33rd session (Paris, October 2005), member States above-mentioned to be part of the Committee. Their mandate will expire at the end of the 35th session of the General Conference of UNESCO (2009).

– The General Conference of UNESCO elected, in its 34th session (Paris, October 2007), member States above-mentioned to be part of the Committee. Their mandate will expire at the end of the 36th session of the General Conference of UNESCO (2011).

Annex II

Extraordinary session in celebration of the thirtieth anniversary of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation: its past and future

Seoul, Republic of Korea, 25-28 November 2008

Recommendation

The Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation hereinafter mentioned as "the Committee",

Expressing its appreciation to the Korean authorities for organizing this Extraordinary Session of the Committee commemorating its thirtieth anniversary,

Welcoming a recent increase in the number of returns of cultural property to its countries of origin, and *acknowledging* a rise in awareness of the general public, researchers and institutions, in the return of cultural property to its countries of origin or its restitution in case of illicit appropriation as well as the fight against illicit traffic,

Recognizing that in its 30 years of existence, the Committee has made substantial achievements in the raising of awareness concerning the return of cultural property to its countries of origin or its restitution in case of illicit appropriation and concerning the fight against illicit traffic,

Mindful of the need to further strengthen the role of the Committee as a facilitator for the return of cultural property to its countries of origin or its restitution in case of illicit appropriation, including through bilateral negotiations,

Taking note of the discussions and the conclusions of the Athens International Conference on the return of Cultural Objects to their Countries of Origin (March 2008) and of the meeting of the non-governmental experts held in Seoul in November 2008,

Reaffirms that certain categories of cultural property fully reveal their authenticity and unique value only in the cultural context in which they were created;

Encourages the States concerned to continue and intensify their efforts with a view to resolving disputes on the return of cultural property or restitution in case of illicit appropriation, by amicable means through bilateral negotiations complemented by other means, such as mediation and conciliation, bearing in mind that in many cases this may involve non-state actors;

Encourages international cooperation with a view to assisting developing countries in building their capacity to facilitate restitution of their cultural property;

Encourages States through international cooperation to develop inventories of their cultural property wherever located and to make better use of existing databases of stolen works of art;

Suggests collecting information on successful restitutions and setting up a database thereon;

Invites States to consider becoming parties to the international instruments relating to the return of cultural property to its countries of origin or return in case of illicit appropriation, and the fight against illicit traffic;

Invites States to consider a more active use of the Committee;

Considers that adoption of rules of procedure on mediation and conciliation will be a significant step to strengthen the role of the Committee;

Urges the development of innovative ways to raise awareness for the return of cultural property to its countries of origin or restitution in case of illicit appropriation, and the fight against illicit trafficking;

Suggests that the International Code of Ethics for Dealers in Cultural Property be amended and *considers* that further efforts should be made to encourage the art market to respect it;

Encourages contributions to the International Fund for the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation;

Invites the Director-General to include an item in the agenda of the Committee's fifteenth Ordinary Session concerning a strategy for the future work of the Committee, within the framework of its mandate, and to prepare a document to that end.

Annex III

Recommendations of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation

UNESCO Headquarters, 11-13 May 2009, Paris

Recommendation No. 1

The Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation

Acknowledging relevant UNESCO resolutions and recommendations,

Expressing its continuing concern for a solution to the issue of the Parthenon marbles,

1. *Welcomes* in this respect the meeting held on 23 April 2009 in London between the Ministries of Hellenic and British Culture, together with observers from UNESCO and the British Museum;

2. *Acknowledges* the fruitful cooperation between Greece and the United Kingdom on cultural matters and *expresses the wish* that this should continue and work as a catalyst in this respect;

3. *Acknowledges* with great satisfaction the accomplishment and opening of the new Acropolis Museum on 20 June 2009, wherein it will be possible for the Parthenon marbles to be exhibited in a special hall in direct visual contact with the monument;

4. *Thanks* Greece for inviting the Director-General of UNESCO and representatives from the United Kingdom to the opening ceremony of the Museum;

5. *Takes note* that three sculptural fragments have respectively been returned from the University of Heidelberg and loaned from Italy and the Vatican to Greece to be co-exhibited in the Parthenon Hall for the sake of their reunification with the original parts from which they were detached;

6. *Invites* the Director-General to assist in convening necessary meetings between Greece and the United Kingdom with the aim of reaching a mutually acceptable solution to the issue of the Parthenon marbles.

Recommendation No. 2

The Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation

Recalling the request of Turkey for the sphinx of Boğazköy, which is currently on display in the Berlin Museum,

Noting the legal and cultural arguments that have been made by both States concerned over a number of years,

Recalling the previous recommendation No. 2 adopted by the Committee on this question at its sixth, tenth, eleventh, twelfth, thirteenth and fourteenth sessions,

Acknowledging the continuing concern of Turkey for the long-awaited resolution of the issue of the sphinx,

Noting that Turkey has transmitted a new dossier to the German side regarding the sphinx during the seventeenth session of the Turkish-German Joint Cultural Commission meeting which took place in Ankara on 16 and 17 October 2006,

Recalling that the issue of the return of the sphinx is a pending agenda item of the Committee since 1987,

Noting with satisfaction that the 7,400 cuneiform tablets which were part of the original request of Turkey from the German Democratic Republic were returned in November 1987, following the fifth session of the Committee in April 1987,

Noting also that the Boğazköy sphinx was situated at Boğazköy (Hattusha) where it was excavated, which was the capital of the Hittite Empire and is currently inscribed in the UNESCO World Heritage List,

1. *Expresses* its hope that the pending request of Turkey with regard to the issue of the sphinx will be solved through bilateral negotiation;

2. *Takes note* of the fact that the last bilateral negotiations on this issue took place on 19 November 2002 in Berlin, without reaching a solution;

3. *Invites* both Parties to hold comprehensive bilateral negotiations as soon as possible with a view to bringing this issue to a mutually acceptable solution;

4. *Also invites* the Director-General to continue his good offices towards the resolution of this issue and to report to the Committee at its sixteenth session.

Recommendation No. 3

The Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation

Recalling the previous recommendation No. 3 on this question at its fourteenth session,

Acknowledging the role of Switzerland to act as a facilitator in the negotiations between the United Republic of Tanzania and the Barbier-Mueller Museum,

1. *Welcomes* the constructive negotiation process which is carried out with a view to the return of the Makondé mask;

2. *Notes* the assurance statement for the protection of the Makondé mask provided by the United Republic of Tanzania on 5 May 2009;

3. *Encourages* the United Republic of Tanzania and Switzerland to continue their efforts to resolve this matter in a positive manner.

Recommendation No. 4

The Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation

Taking note of the progress achieved during the examination of the draft rules of procedure on mediation and conciliation,

1. *Decides*, in the application of rule 10.1 of its Rules of Procedure, to constitute a subcommittee to continue intersessional discussions on the draft text and to present the results of its work during the next session of the Committee;

2. *Decides* that the subcommittee, which will be open-ended, will be composed in accordance with the principles of a balanced geographic distribution after consultation with the Presidents of the regional groups.

Recommendation No. 5

The Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation

Decides to hold its sixteenth ordinary session at UNESCO Headquarters during the first half of 2010.

United Nations A/64/304

General Assembly

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Sixty-fourth session
Item 71 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Strengthening the role of the United Nations in enhancing the effectiveness of the principle of periodic and genuine elections and the promotion of democratization

Report of the Secretary-General**

Summary

The present report describes the activities of the United Nations system in providing electoral assistance to Member States over the past two years. United Nations electoral assistance is provided only at the request of a Member State or on the basis of a resolution of the Security Council or the General Assembly. Over the past 20 years, the United Nations has provided electoral assistance to 104 Member States and 4 territories.

As the focal point for electoral assistance activities, the Under-Secretary-General for Political Affairs is responsible for ensuring organizational coherence as well as political and technical consistency in all United Nations activities. In these tasks, he is supported by the Electoral Assistance Division, which assists with the design and staffing of United Nations electoral activities, provides ongoing technical guidance and maintains both the roster of electoral experts and the Organization's electoral institutional memory.

* A/64/150.

** The present report was delayed owing to the need to reflect information provided by a variety of sources.

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In peacekeeping or post-conflict environments, electoral assistance is generally provided through components of field missions of the Department of Peacekeeping Operations or the Department of Political Affairs. The United Nations Development Programme is the Organization's major provider of technical assistance in the development context, as part of democratic governance programmes, and increasingly supports Security Council electoral mandates as part of integrated missions. A number of other United Nations departments, agencies, funds and programmes are also involved in the provision of electoral assistance, including the Office of the United Nations High Commissioner for Human Rights, the United Nations Democracy Fund, the United Nations Volunteers programme, the United Nations Development Fund for Women and the Department of Economic and Social Affairs.

The report indicates that the demand from Member States for United Nations electoral assistance remains high. During the reporting period, assistance was provided to 52 Member States, 8 of them on the basis of a Security Council mandate. Over the years, the United Nations has developed significant expertise in the provision of electoral assistance, including through its roster of electoral experts and its institutional memory. It has also developed a positive track record for effective delivery of electoral assistance, including in some of the most difficult post-conflict and geographical environments. Most importantly, given that elections are fundamentally political events, the Organization's impartiality remains its biggest asset.

The report highlights a number of positive trends, including the increasing number of Member States that are using elections as a peaceful means of discerning the will of the people, the growing capacity among newer democracies to administer credible elections, and increasing South-South cooperation among electoral administrators. At the same time, a number of challenges have emerged. These include the potential for elections to be overshadowed by political discord or violence, especially after results are announced; concerns regarding the cost of elections and sustainability; and, following the increase of actors involved in electoral assistance both inside and outside the United Nations, the need to ensure coordination and cohesion and safeguard United Nations impartiality.

The report makes a number of observations. These include the need to: make sustainability and cost-effectiveness more central in the design and provision of electoral assistance; consider additional measures to ensure that elections contribute to peace and good governance, rather than violence or instability; and increase the use of special or more flexible administrative procedures, with the necessary safeguards and controls, for electoral projects in a crisis situation or under a Security Council mandate. The report suggests reiteration of the role of the focal point to ensure United Nations coordination and consistency as well as appropriate relationships with regional and intergovernmental organizations, and notes that the United Nations must continue to support electoral programmes that facilitate the participation of women and seek to ensure the rights of minorities and marginalized groups.

The report concludes by recalling that while elections are technical processes, they are fundamentally political events. However, the true measure of an election is whether it engenders broad public confidence in the process and trust in the outcome. An election run honestly and transparently, respecting basic rights, with effective and neutral support of State institutions, and responsible conduct of participants (leaders, candidates, and voters) is most likely to achieve an accepted and peaceful outcome.

I. Introduction

1. The present report has been prepared in conformity with General Assembly resolution 62/150 and covers electoral activities undertaken by the United Nations since the previous report on this subject (A/62/293).

2. The United Nations has been involved in providing electoral assistance since its foundation. In the early years, this included promoting the principle of self-determination through the observation and supervision of elections held in the context of decolonization processes. In more recent years, it has focused on seeking to strengthen national institutional capacities in a sustainable manner with due consideration to the legal, political, social, economic and cultural conditions and contexts, and supporting Member States to conduct credible elections in accordance with the principles outlined in international human rights instruments.

3. This was affirmed in General Assembly resolution 46/137, through reference to article 21 of the Universal Declaration of Human Rights, which provides that "the will of the people shall be the basis of authority of government [and that] this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures". The same resolution makes reference to similar principles contained in article 25 of the International Covenant on Civil and Political Rights, which establishes that every citizen shall have the right "to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage ... guaranteeing the free expression of the will of the electors".

4. United Nations electoral assistance is provided only at the request of Member States, in conformity with the principle of the sovereign equality of States and the realization that there is no single electoral methodology or system that is appropriate for all countries. In the last 20 years, the United Nations has provided electoral assistance to 104 Member States and 4 territories. During the reporting period, the United Nations provided electoral assistance to 52 Member States. Selected examples of electoral assistance are listed in annex I to the present report. A full list of countries and territories to which assistance has been provided during the reporting period is contained in annex II.

5. In his report to the fifty-eighth General Assembly (A/58/212), then-Secretary-General Kofi Annan summarized United Nations electoral assistance into four categories: (a) technical assistance; (b) the organization and conduct of elections; (c) observation or monitoring of elections; and (d) support where elections are expected to play a significant role in the peacebuilding phase of political negotiations. Today, most United Nations electoral support takes the form of technical assistance and capacity-building as well as occasionally targeted support to peacebuilding or political negotiations. The organization of elections remains exceptional. The United Nations now rarely observes elections; in contrast, many regional organizations are prioritizing this activity.

6. In recent years, electoral assistance has become more complex. Requests from Member States have tended to become more focused on highly specialized areas such as voter registration, electoral legislation reform and training of electoral officials. At the same time, there has been an increase in the number of donors and electoral assistance providers, adding both specialized technical knowledge as well as challenges to coordination among multiple actors.

7. The present report summarizes the work of the United Nations departments, programmes and agencies involved in the provision of electoral assistance during the reporting period, discusses cooperation within and outside the United Nations system and considers key trends and challenges. Finally, it makes a number of observations aimed at strengthening the provision of electoral assistance by the United Nations system.

II. United Nations electoral assistance during the reporting period

A. Mandates and activities

8. United Nations assistance to Member States in conducting credible, periodic and genuine elections continues to be a system-wide endeavour. The United Nations institutional framework benefits from relatively clear mandates from the General Assembly.

9. The Under-Secretary-General for Political Affairs is the United Nations focal point for electoral assistance activities (hereafter the focal point), with a mandate under resolution 46/137 to ensure organizational coherence and political and technical consistency in all United Nations electoral activities. The importance of the focal point's role in ensuring United Nations coordination in developing and disseminating electoral policies and in strengthening the Organization's electoral institutional memory was reiterated in General Assembly resolution 62/150.

10. The focal point is supported in these functions by the Electoral Assistance Division, which is also tasked by the General Assembly with maintaining a geographically diverse roster of qualified international electoral experts who can provide technical assistance as well as assist in electoral processes. The Division assists with the design and staffing of all United Nations electoral projects and with ongoing technical guidance as required on behalf of the United Nations focal point.

11. In peacekeeping or post-conflict environments, electoral assistance is generally provided through components of field missions under the aegis of the Department of Peacekeeping Operations or the Department of Political Affairs. During the reporting period, eight Member States received electoral assistance on the basis of a Security Council mandate.

12. The United Nations Development Programme (UNDP) is the Organization's major implementing body for long-term electoral support outside the peacekeeping or post-conflict context. In its resolution 62/150, the General Assembly reiterated the importance of democratic governance assistance programmes of UNDP, in particular those that strengthen democratic institutions and linkages between civil society and Governments. Electoral assistance is provided by UNDP to an average of 30 countries a year, roughly half of which are in Africa. With the trend towards integrated United Nations efforts, UNDP is increasingly providing support to electoral assistance mandates undertaken by field missions under the aegis of the Department of Peacekeeping Operations or the Department of Political Affairs.

13. Other United Nations departments, agencies, funds and programmes are also involved in electoral assistance, including the United Nations Democracy Fund, the Office of the United Nations High Commissioner for Human Rights (OHCHR), the

United Nations Volunteers programme, the United Nations Development Fund for Women (UNIFEM), the United Nations Office of Project Services (UNOPS) and the Department of Economic and Social Affairs.

14. Since its establishment in 2005, the United Nations Democracy Fund has supported 204 projects, primarily run by non-governmental organizations, to strengthen civil society, promote human rights and encourage participation in the democratic process in 136 countries around the world. Twenty of the projects were in the area of electoral assistance. This serves to complement the United Nations support to Governments to strengthen democratic institutions. In addition, the United Nations Democracy Fund has also provided support to a number of major global and regional democracy projects, including the ACE Electoral Knowledge Network. So far contributions of close to $100 million have been received from over 35 countries, and a further 69 projects were recently approved by me in the third funding round.

15. OHCHR continues to provide advice on human rights aspects of elections. This has included the preparation of guidelines for analysis of electoral laws, implementation of public information activities and the provision of technical assistance. For example, at the request of the Government of Togo, OHCHR monitored the human rights situation throughout the country before, during and after the October 2007 legislative elections, using a human rights-based methodology involving national observers from civil society. This helped to contribute to a peaceful electoral atmosphere.

16. The United Nations Volunteers programme provides support to United Nations field operations, deploying over 1,000 volunteers to 24 electoral operations in collaboration with the Department of Political Affairs, the Department of Peacekeeping Operations and UNDP during the biennium. As of June 2009, nearly 400 volunteers were working in 16 countries, including Afghanistan, Côte d'Ivoire, the Democratic Republic of the Congo, the Sudan and Timor-Leste, providing advice to local electoral authorities, and helping with voter registration and civic education at the community level.

17. UNIFEM provides technical expertise to numerous United Nations projects and programmes with a view to ensuring that gender equality and women's participation receive adequate attention. This input has, for example, supported the design of gender-responsive electoral laws in Indonesia and strengthened the capacity of women to contest in countries such as Ecuador, Indonesia, Nepal and Rwanda. UNIFEM has also convened South-South exchanges for women's organizations and candidates from a number of African countries, to enable them to learn skills for more effective engagement with the electoral process.

18. During the biennium, UNOPS provided support to electoral activities in partnership with the Department of Political Affairs, the Department of Peacekeeping Operations, UNDP and Member States. This included capacity-building support to the election commission in Afghanistan in the areas of logistics, administration, security and operations, and to the election commission in Iraq in the areas of voter education and communications. Support was also provided to domestic observers in Iraq. Other assistance included the rehabilitation of the national archives in Côte d'Ivoire in advance of the voter registration process.

B. Cooperation and coordination within the United Nations system

19. In the previous report (A/62/293), the wide range of United Nations actors and the importance of coordination and consistency in electoral assistance activities were noted. In its resolution 62/150, the General Assembly reiterated the importance of reinforced coordination and reaffirmed the role of the focal point in ensuring system-wide coherence, including by strengthening institutional memory and the development and dissemination of electoral policies.

20. To foster greater system-wide coherence and consistency, a coordination mechanism has been established under the auspices of the focal point to bring together relevant United Nations departments, agencies and programmes involved in electoral assistance. This aims to encourage more systematic exchange of information, the improved harmonization of activities, a more intensive policy dialogue, the adoption of common positions on policy and issues of common concern, and the promotion of stronger partnerships within the United Nations system. The Department of Political Affairs and UNDP are also discussing revision of the joint note of guidance on electoral assistance issued in 2001 by the focal point and the UNDP Administrator (A/56/344, annex II), which outlines roles and responsibilities, to take account of developments and lessons learned over the past eight years.

21. Joint guidelines on enhancing the role of women in post-conflict electoral processes, prepared by the Department of Peacekeeping Operations and the Department of Field Support in cooperation with the Electoral Assistance Division of the Department of Political Affairs, were published in October 2007. The guidelines, which were formulated on the basis of findings from national civil society consultations, provide advice on measures to increase the participation of women as voters, candidates and administrators and to help to ensure that the elections have an equal impact on women and men. The guidelines are designed to assist United Nations personnel to implement obligations under Security Council resolution 1325 (2000). The guidelines will be reviewed and revised in late 2009, and distributed widely within the United Nations system and to Member States.

C. Cooperation with other organizations

22. In the reporting period, the United Nations has continued to enhance cooperation with other international, governmental and non-governmental organizations, both in the field and at the headquarters level, with a view to strengthening the delivery of electoral assistance.

23. The increasing multiplicity of assistance providers outside the United Nations system has enriched the knowledge pool and opened new opportunities, including for greater South-South cooperation. For example, respected members of election management bodies, such as those in Ghana and South Africa, are being asked to assist election administrators elsewhere on the African continent and around the world. The Mexican election commission, which once received substantial support from the United Nations, now regularly acts as a provider of training to other electoral management bodies. The United Nations often supports and facilitates these exchanges. At the same time, multiple electoral assistance providers have also

created coordination challenges and, in some contexts, competition for increasingly substantial donor funding.

24. The United Nations continues to be a partner in two global electoral knowledge tools, the ACE Electoral Knowledge Network and the Building Resources in Democracy, Governance and Elections (BRIDGE) project. The ACE Electoral Knowledge Network includes International Institute for Democracy and Electoral Assistance (International IDEA), Elections Canada, the Electoral Institute of Southern Africa (EISA), Instituto Federal Electoral — Mexico, the International Foundation for Electoral Systems (IFES), UNDP, the Electoral Assistance Division, and the Department of Economic and Social Affairs. ACE provides comprehensive and authoritative information on elections, promotes networking among election-related professionals and offers capacity development services. An evaluation of ACE conducted in 2009 will define its vision and strategic objectives in the coming years. The second electoral knowledge tool, BRIDGE, is a partnership of the Australian Electoral Commission, International IDEA, IFES, the Electoral Assistance Division and UNDP. The purpose of the partnership is to develop, implement and maintain a comprehensive curriculum on effective administration of electoral processes, and provide modular training packages for electoral management bodies. During the reporting period, a newly revised and expanded version of BRIDGE was prepared by election experts from various regions, which will be translated into various languages for widespread use.

25. The United Nations, through UNIFEM and UNDP, is also a partner in the International Knowledge Network of Women in Politics (iKNOW), an innovative global platform that uses the exchange of information and networking to promote women's increased role and presence in political processes around the world. The network, which also includes International IDEA, the Inter-Parliamentary Union and the National Democratic Institute for International Affairs, features over 100 experts on women and politics and an online resource library with over 400 reports, handbooks and training materials on a wide range of electoral issues.

26. The United Nations continues to work on electoral issues in collaboration with regional intergovernmental organizations such as the African Union, the European Union, the Organization of American States (OAS) and the Organization for Security and Cooperation in Europe (OSCE), including through dialogue on programmes of common interest and exchange of information and best practices.

27. During the reporting period, the Electoral Assistance Division has continued to provide capacity-building support to the Democracy and Electoral Assistance Unit of the African Union Commission, including in the establishment of a database of election experts, support for institutional memory, dissemination of best practices and management of electoral assistance funds. The Electoral Assistance Division also provided support to the Southern African Development Community in strengthening its logistical and technical arrangements for election observation. Following the violent aftermath of the 2007 elections, the Department of Political Affairs and UNDP supported the African Union-mandated Panel of Eminent African Personalities in facilitating a solution to the 2007 post-electoral crisis in Kenya. The Electoral Assistance Division provided expert advice throughout the African Union mediation efforts and assisted in the design and establishment of the Independent Review Commission.

28. UNDP continues to deliver a significant part of its electoral assistance activities within the formal framework of a partnership with the European Commission, for which operational guidelines were agreed in April 2006. During the reporting period, the partnership, supported by a Task Force based in Brussels, conducted five joint trainings of European Commission and UNDP country staff to improve their skills in delivering assistance and mobilized resources for 30 electoral assistance projects.

29. The Declaration of Principles for International Election Observation, which was commemorated at United Nations Headquarters in October 2005, and mentioned in my previous report (A/62/293), aims to harmonize the methods and standards of the many intergovernmental and non-governmental organizations engaged in observing elections. During the reporting period, the total number of signatories rose to more than 30, representing the vast majority of recognized and respected actors in the field. I encourage others to join the emerging consensus regarding these principles.

III. United Nations resources for electoral assistance

30. Significant funds have been allocated to United Nations electoral assistance projects around the world. The cost of electoral components in field missions are covered by assessed contributions for the particular missions, while the majority of resources for UNDP electoral assistance projects are leveraged in the field through the contributions of Member States.

31. In its resolution 63/261 on strengthening of the Department of Political Affairs, the General Assembly approved a total of eight new posts (5 Professional and 3 General Service) and one post reclassification for the Electoral Assistance Division. These additions will strengthen the ability of the Department of Political Affairs to respond more quickly and effectively to the requests of Member States and to assure greater coordination and coherence of United Nations electoral assistance.

32. During the reporting period, the Electoral Assistance Division, in line with a recommendation of the Office of Internal Oversight Services (OIOS), gave priority to converting its roster into an electronic format, implementing its roster procedures within the Nucleus/Galaxy application framework. This will enhance efficiency and transparency in the selection of experts and foster geographic and gender diversity, while assuring that the roster remains fully integrated into the Organization's broader plans for human resources management reforms. However, the Division has some concerns as to whether the new recruitment system will be able to meet the tight electoral timelines for deployment of qualified staff to critical electoral field missions, in particular large-scale, Security Council-mandated operations and rapid-response UNDP electoral country projects. The Division has also strengthened its institutional memory by streamlining document processing, developing a specific software tool that functions as a document library for reference and storage of documents.

33. The United Nations continues to pursue gender balance in the staffing of its field missions. Some electoral missions have almost achieved a gender balance among their staff, and the United Nations Chief Electoral Officers in seven key country electoral projects (United Nations Assistance Mission for Iraq (UNAMI),

UNDP-Elect in Afghanistan, UNDP electoral projects in Honduras, Indonesia, Lebanon and Yemen and the United Nations Operation in Côte d'Ivoire certification cell) are female. At the same time, the representation of women on the electoral expert roster has remained at 30 per cent, a figure that also reflects the number of female applicants, indicating that additional efforts are necessary in this area.

34. The Department of Political Affairs Trust Fund for electoral assistance and the UNDP Democratic Governance Thematic Trust Fund remain important sources of critical extrabudgetary funding for electoral assistance activities. Such funds allow the implementation of rapid response, innovative or catalytic projects and programmes, including those that support the participation of women and vulnerable groups. In mid-2009, UNDP launched the Global Programme on Electoral Cycles Support, which will provide assistance over the next three years to countries implementing electoral cycle initiatives to strengthen electoral institutions and processes. This initiative is directly executed by the UNDP Bureau for Policy Development, and the Programme Management Team is based in Brussels. The Government of Spain is the lead donor.

IV. Conflict prevention

35. In my previous report, I noted the potential for elections to be overshadowed by political discord or violence, especially after results are announced, or during efforts to form a government. Regrettably, events during the reporting period in a number of countries, demonstrated again the potential for elections to trigger events which divide, rather than unify.

36. Electoral shortcomings — such as severely flawed voter lists, the misuse of incumbency, a lack of transparency and the bias of election officials — can lead to violent reactions to real or perceived fraud. However, most often these shortcomings are not the cause, but the spark to ignite deeper rooted social, economic or political tensions. If underlying political conditions are not conducive to confidence among stakeholders, elections can be a trigger for conflict.

37. The United Nations has taken specific measures to prevent or mitigate conflict related to elections. During the reporting period, I dispatched a high-level panel of electoral experts to assist in the exercise of my good offices during the conduct of elections in Bangladesh, Maldives and Mauritania. In all three cases, the work of the United Nations complemented that of international and domestic observers, contributing to an increased level of confidence in the electoral process and the eventual acceptance of results and peaceful completion of the elections.

38. It remains crucial to ensure that the voices of women, minorities and marginalized groups influence post-conflict discussions on electoral system reform. This approach has led to the adoption of special measures such as quotas which have, for example, increased female parliamentary representation in Afghanistan and Burundi, and helped to ensure a linguistically and ethnically diverse constitutional assembly in Nepal.

V. Sustainability

39. Elections are expensive, regardless of the way in which they are conducted. But some processes are more costly per voter than others; and some of the poorest countries in the world have chosen some of the most expensive electoral processes and technology. While the choice of electoral system and process is of course the sovereign right of Member States, I am concerned about techniques and systems that might cause a State, in the conduct of its own elections, to be financially dependent on donors, or technologically dependent on specific vendors, for extended periods.

40. I also encourage Member States, donors and assistance providers to consider the cost of election processes within the context of other development priorities, in particular the Millennium Development Goals. Well-run elections are a crucial investment, but experience throughout the world has shown that it is not the case that the more complex or expensive a system, the more successful the elections will be.

41. There is increasing understanding that electoral assistance should be available, if requested and required, throughout the entire electoral cycle, meaning before and after elections. The aim of this "electoral-cycle approach" is to secure needed resources and expertise to support effective planning and institution-building between electoral events. It should therefore hasten sustainability, and decrease the time frames for long-term United Nations support. The approach must continue to be solidly based on a needs assessment, and be subject to clear sustainability criteria and monitoring and evaluation tools.

VI. Observations

42. A number of positive trends have been identified in recent years. Most significantly, an increasing number of Member States are using elections as a peaceful means of discerning the will of the people, which builds confidence in representative government and enhances peace and stability. I am also encouraged by the growing capacity among newer democracies to administer credible elections.

43. Demand from Member States for United Nations electoral assistance continues to be high. During the reporting period, almost one quarter of Member States have requested, and received, some form of electoral support. This is an indication of the general appreciation of the work of the United Nations in supporting credible, periodic and genuine elections. I will continue to work with Member States to ensure timely support to electoral assistance as requested.

44. Over the years, the United Nations has developed significant expertise in the provision of electoral assistance, including through its roster of electoral experts and its institutional memory. It has also developed a positive track record for effective support, including in very challenging environments. Most importantly, given that elections are fundamentally a political event, the Organization's impartiality remains perhaps its most valuable asset. This must continue to be scrupulously safeguarded. The United Nations system will uphold these three principles — expertise, effectiveness and impartiality — as we provide electoral assistance.

45. The multiplicity of actors involved in electoral assistance within the United Nations system remains a strength. The newly established Inter-Agency Coordinating Mechanism for United Nations Electoral Assistance (ICMEA), chaired

by the Department of Political Affairs, will be essential in facilitating communication and cooperation among United Nations departments, agencies, funds and programmes. However, pressures from within and outside the system can create incentive for disharmony and overlap. I therefore encourage Member States to reaffirm the role of the United Nations focal point in ensuring coherent and consistent electoral practices and policies.

46. Multiple electoral assistance providers outside the United Nations and increased competition for donor financing have increased coordination challenges. I encourage Member States to reiterate the role of the focal point, articulated in General Assembly resolution 46/137, to ensure appropriate working relationships with regional and intergovernmental organizations and the avoidance of duplication of efforts.

47. As noted in previous reports, the Organization must continue to support programmes that facilitate the participation of women in electoral processes and encourage systems that seek to safeguard the rights of minorities and marginalized groups.

48. The United Nations has made progress towards more efficient and harmonized administrative processes. However, tight electoral time frames, particularly in the peacekeeping or peacebuilding contexts, remain a consistent challenge for the Organization's recruitment, procurement and funding mechanisms. This is particularly complicated in the context of integrated missions. While the longer-term answer is greater system-wide coherence, in the near term, the creation or increased use of special or more flexible procedures, in particular for procurement and recruitment of staff, with necessary safeguards and controls, should be considered for electoral projects in a crisis situation or under a Security Council mandate. In this regard, use of the roster of electoral experts should be encouraged for all United Nations electoral projects.

49. For electoral assistance under Security Council mandates, the Security Council should consider stating clearly its expectations regarding coordination with other assistance providers. Subject to the wishes of the Member State, a clear indication that the United Nations should have the lead role in ensuring coordination among assistance providers would help to avoid duplication of efforts, maximize cost-effectiveness and help to ensure the clear accountability of United Nations field missions to the Council.

50. In the light of the potential, in certain contexts, for elections to exacerbate existing tensions or fuel new conflict, we need to seek additional ways to ensure that elections contribute to peace and good governance, rather than act as a trigger for violence or instability. In the same vein, we should repudiate unconstitutional change of leadership as well as any attempt to undermine the will of the people through electoral malfeasance. I will continue to use my good offices to encourage the peaceful conduct of elections, including by supporting the efforts of regional organizations. We will also continue the practice of deploying electoral experts during political processes to provide necessary guidance on the political implications of electoral systems and realistic timelines.

51. Given the increasing need for rapid response in the prevention of election-related conflict, as well as targeted and specialized elections-related programmes, I encourage Member States to consider making voluntary contributions for electoral

assistance to the Trust Fund for Electoral Assistance, the Democratic Governance Thematic Trust Fund and the United Nations Democracy Fund.

52. Especially during a time of global economic downturn, sustainability and cost-effectiveness must become a more central consideration in the design and provision of electoral assistance, whether by the United Nations or by other bodies. I call upon Member States and donors to continue to consider carefully the cost of elections in the light of other pressing developmental needs, including the Millennium Development Goals.

53. It is important to emphasize that while elections are technical processes, they are fundamentally political events. The technical quality of an election is important, in particular insofar as it furthers and protects fundamental political and human rights. However, the true measure of an election is whether it engenders broad public confidence in the process and trust in the outcome. An election run honestly and transparently, respecting basic rights, with the effective and neutral support of State institutions, and responsible conduct of participants (leaders, candidates and voters) is most likely to achieve an accepted and peaceful outcome.

Annex I

Examples of United Nations electoral assistance during the reporting period

Afghanistan

1. Afghanistan will hold presidential and provincial elections in 2009, followed by parliamentary and local elections in the summer of 2010. While the last elections in 2005 were co-organized by the United Nations and the Afghan Government, the 2009 elections will be the first in more than 30 years to be fully organized by Afghan institutions. The United Nations Assistance Mission in Afghanistan (UNAMA) has been mandated by the Security Council, and requested by President Karzai, to take the lead in the coordination of international electoral assistance. A technical assistance project, managed by the United Nations Development Programme (UNDP), has been put in place to assist the Independent Election Commission and other electoral stakeholders.

2. The UNDP project, which is being implemented by some 120 international experts deployed throughout the country, includes assistance in updating of the voter register, which was successfully achieved between October 2008 and February 2009, as well as support to a wide range of other electoral activities, including the creation of an Election Complaints Commission and Media Commission. Other elements include support for domestic observation groups, media monitoring and police training. The United Nations Development Fund for Women has supported dialogue between women members of parliament and the Independent Election Commission aimed at ensuring that women's concerns about the electoral process are heard and addressed adequately. The cost of this electoral cycle, including the update of the voter register and four elections, could be as high as $500 million.

Bangladesh

3. Following significant engagement by the United Nations starting in autumn 2006, the Secretary-General deployed a High-level Panel to Bangladesh to encourage the peaceful and credible conduct of parliamentary elections held in December 2008. The Panel made two visits, one in November prior to the lifting of the state of emergency, and one during the election period in December. During the visits, the Panel sought the views of a wide range of election stakeholders including state and electoral authorities and key political party leaders, and was widely seen to have made an important contribution to the peaceful conduct of the elections.

4. UNDP provided significant assistance to the Bangladesh Election Commission, including through the strengthening of administrative systems and information technology, training of election officials and preparation of a new voter register containing photographs of voters. As a result of this project, over 81 million people were registered in a span of just 11 months, from August 2007 to July 2008. UNDP also provided support to the reform of election legislation and delimitation of electoral constituencies.

Plurinational State of Bolivia

5. The Plurinational State of Bolivia is preparing for general elections in December 2009 and departmental elections in April 2010. Late in 2008, the

Government endorsed a request from the National Electoral Court for United Nations technical assistance. Following a needs assessment mission by the Electoral Assistance Division in spring 2009, a UNDP-led project was developed to provide short- and long-term technical support. Short-term activities include assistance to the National Electoral Court with out-of-country voting, special indigenous boundary delimitation and mechanisms to promote transparency. The longer-term activities will focus on capacity-building for Bolivian electoral institutions.

Côte d'Ivoire

6. The United Nations continues to provide technical, material and logistical support to the Independent Electoral Commission in preparation for upcoming presidential and parliamentary elections. A comprehensive identification and registration process for the general population and voters was completed on 30 June 2009. The first round of presidential elections is scheduled for November 2009. In line with a mandate provided by the Security Council, the Special Representative of the Secretary-General in Côte d'Ivoire is mandated to certify that all stages of the electoral process provide the necessary guarantees for holding open, free, fair and transparent presidential and legislative elections. This will be conducted using a framework established in consultation with national and international partners.

Democratic Republic of the Congo

7. The United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) Electoral Division, together with the UNDP-managed *Project d'appui au cycle électoral en République Démocratique du Congo* (APEC), continued to support the Congolese Independent Electoral Commission in a number of electoral activities, with a focus on the local elections, scheduled to be held in late 2009. Voter registration began in June 2009 in Kinshasa and has since been extended to other parts of the country.

8. The local elections are an essential element in the consolidation of democracy and devolution of power to subnational administrations. They are also an important element in strengthening the capacity of the election commission prior to the 2011 general elections, when the involvement of MONUC in electoral assistance is likely to be greatly reduced and transferred to the UNDP country office. While the organization of elections in the Democratic Republic of the Congo will always pose a huge operational burden, it is hoped that the local election can be used by the election commission as an opportunity to explore Congolese solutions for the country's electoral challenges.

Guinea-Bissau

9. Following a request from the Prime Minister and approval by the United Nations focal point, UNDP developed a technical assistance project in 2008 to assist the electoral authorities with voter registration and the organization of legislative elections scheduled to be held in 2008 and presidential elections scheduled for 2010. Based on a further request, the United Nations Peacebuilding Support Office in Guinea-Bissau (UNOGBIS) established a small team to coordinate election observation by international observer missions. Although delayed when held on 16 November 2008, the parliamentary elections passed off successfully. Following the assassination of President Vieira in March 2009, the United Nations was

requested to assist with the organization of early presidential elections. In a matter of weeks, UNDP established a new electoral assistance team to help the electoral authorities, and UNOGBIS set up a new team to support the coordination of observers. Both rounds of the elections, on 28 June and 26 July, were completed peacefully.

Honduras

10. Honduras held primary elections in November 2008, and general elections are planned for November 2009. In order to prepare for both elections, the United Nations country team requested the Electoral Assistance Division to conduct an advisory mission in 2007 in order to identify possible areas for electoral assistance. Based on a later request from the Supreme Electoral Tribunal, the Division conducted a needs assessment mission in late 2007 and provided UNDP with additional suggestions regarding appropriate United Nations electoral support. The resulting UNDP project focuses on capacity-building for the Tribunal and assisting the Government in coordinating international electoral assistance.

Indonesia

11. UNDP is currently providing electoral assistance to Indonesia through a three-year, $17 million, multi-donor programme. This has two primary components, both of which are designed to enhance and consolidate the capacity of the National Elections Commission (KPU). The first of these was the provision of short-term assistance, advisory services and operational support for KPU in its preparations for and conduct of the 2009 legislative and presidential elections. The second component began as the 2009 electoral process was finalized and will continue through 2010. This focuses on reviewing the administrative lessons learned from the 2009 elections and translating these lessons into effective follow-up and institutional change.

12. UNDP has provided support and capacity-building for Indonesia's electoral commission over a number of years, tailoring successive programmes to meet the changing needs of KPU over time. The extent and complexity of assistance therefore increased and decreased as warranted by the electoral requirements at the time. As the current programme draws to a close, consideration will be given to further assistance that may be requested.

Iraq

13. The Iraqi Parliament appointed the members of the Independent High Electoral Commission (IHEC) in May 2007. Since then the United Nations Assistance Mission for Iraq (UNAMI), a special political mission operating under a Security Council mandate, has continued to assist, support and advise IHEC and the Government of Iraq on electoral processes. The United Nations leads a team of international election experts that provide technical and policy advice as well as work to build the capacity of Iraq's electoral institutions. UNAMI partner organizations include UNDP, the United Nations Office for Project Services (UNOPS), the European Union, the National Democratic Institute for International Affairs, the International Foundation for Electoral Systems, and an Italian non-governmental organization, Scuola Superiore Sant' Anna.

14. The governorate council elections in January 2009 were the first real test of IHEC in implementing a large-scale nationwide election event. These elections, also the first funded by the Iraqi Government since the end of the transitional period, were deemed a widespread success. Other 2009 election activities include presidential and parliamentary elections in the Kurdistan region and a national voter registration exercise to update the voter list. IHEC, with continued United Nations support, will conduct nationwide parliamentary elections in January 2010 followed by district and subdistrict elections later in the year.

Kenya

15. Kenya's presidential elections of 27 December 2007 were the most tightly contested in its history and were followed by a wave of violence across the country. However, following mediation efforts by former United Nations Secretary-General Kofi Annan, Chair of the African Union Panel of Eminent Personalities, President Mwai Kibaki and Prime Minister Raila Odinga signed the Agreement on the Principles of Partnership of the Coalition Government, on 28 February 2008.

16. The Department of Political Affairs and UNDP supported the Panel of Eminent African Personalities throughout the mediation process. The Electoral Assistance Division provided expert advice, including on the design and establishment of the Independent Review Commission (IREC), which was mandated to inquire into all aspects of the 2007 general elections, with particular emphasis on the presidential election. IREC presented its report in September 2008, which contained recommendations on the entire electoral process, triggering intense discussions on the need for urgent electoral reforms. The Government of Kenya is in the process of implementing these reforms and the United Nations will, upon request, continue to provide technical support to the Kenyan institutions involved in the electoral reform process.

Nepal

17. Established in 2007, the United Nations Mission in Nepal (UNMIN) provided the country's Election Commission with technical assistance in planning, preparing and conducting the Constituent Assembly elections. These were the first to be held after 10 years of conflict and resulted in the establishment of a 601-seat Constituent Assembly, tasked with drafting a new constitution by May 2010.

18. United Nations technical assistance included the deployment of 19 international technical advisers, who assisted at the regional and national levels with legal issues, operational planning, civic and voter education, training and logistics. Seventy United Nations Volunteers served as District Electoral Advisers throughout the country.

19. At the request of the parties to the Comprehensive Peace Agreement, the United Nations also created an Electoral Expert Monitoring Team of five senior electoral experts appointed by the Secretary-General. During periodic visits between June 2007 and April 2008, the team reviewed technical preparations for the elections and met with a wide range of election stakeholders, including women and traditionally marginalized groups. They also reviewed the conduct of election day activities. The Secretary-General shared the team's periodic reports with the Election Commission and the Government of Nepal.

Annex II

Countries and territories receiving United Nations electoral assistance during the reporting period

Afghanistan*

Algeria

Bangladesh

Bhutan

Plurinational State of Bolivia

Cambodia

Cameroon

Cape Verde

Chad

Congo

Côte d'Ivoire*

Democratic Republic of the Congo*

Ethiopia

Guinea

Guinea-Bissau

Guyana

Haiti*

Honduras

Indonesia

Iraq*

Kenya

Lebanon

Liberia

Madagascar

Malawi

Maldives

Mauritania

Marshall Islands

Mexico

Mozambique

Nepal*

Netherlands Antilles (Curacao)

New Zealand (Tokelau)

Niger

Nigeria

Occupied Palestinian Territory

Pakistan

Panama

Peru

Republic of Moldova

Romania

Rwanda

Sierra Leone

Sudan*

Suriname

Timor-Leste*

Togo

Turkmenistan

United Republic of Tanzania

Yemen

Zambia

* Receiving United Nations electoral assistance on the basis of a Security Council mandate.